

**REMARKS**

The Office Action mailed February 20, 2007 has been carefully considered. Claims 1-35 were pending in the application. Claims 28-29 were withdrawn from consideration. Claims 1-27 and 30-35 were rejected. Claims 3-4, 12 and 23 have been cancelled. Claims 1, 2, 8, 9, 11, 13-16, 20, and 24-35 have been amended and claims 36 and 37 are new. None of the amended or new claims introduce new subject matter. None of the amendments were made to distinguish the claims from prior art. Since the prior art rejections failed to provide a prima facie showing of unpatentability, the burden of proof remains with the Patent Office. The reasons for, and support of, the amended and new claims are as follows.

Claim 1; supported at page 34, lines 1-3 and original claim 4; the amendment improves the clarity of Applicant's claimed invention.

Claim 2; supported at page 34, lines 1-3 and Table 4 on page 33.

Claim 8; the amendment does not further limit the claim, it merely removes extraneous words.

Claim 9; the amendment does not further limit the claim, it merely clarifies.

Claims 11, 13 and 27; the amendment does not further limit the claim, it merely corrects grammar.

Claim 14; the amendment removes extraneous words, corrects grammar and improves definite claiming.

Claim 15; the amendment removes extraneous words and improves definite claiming.

Claim 16; the amendment removes extraneous words and improves definite claiming.

Claim 20; the amendment is supported by original claim 1; it does not further limit the claim, it merely improves definite claiming.

Claims 24-25; the amendment does not further limit the claim, it merely changes grammar for definite claiming.

Claim 26; the amendment does not further limit the claim, it merely changes grammar for definite claiming.

Claim 28-29; the amendment brings the claim into conformity with the amended limitations of the claim from which it depends.

Claim 30; the amendment removes duplicate limitations and extraneous words and corrects grammar; the amendment does not further limit the claim.

Claim 31; the amendment does not further limit the claim, it corrects dependency and removes duplicate limitations.

Claim 32; the amendment does not further limit the claim, it removes duplicate limitations.

Claim 33; the amendment does not further limit the claim, it removes extraneous words, corrects grammar and improves definite claiming.

Claim 34; the amendment removes extraneous words, corrects grammar and does not further limit the claim.

Claim 35; the amendment corrects dependency and antecedent basis.

Claim 36 is supported by original claim 15.

Claim 37 is supported by original claim 33.

The amendment to the specification at page 8 corrects an unintended error and is supported by page 11, first paragraph, line 6.

Applicant acknowledges the Examiner's comment that if the product claims are found allowable, the process claims will be rejoined. Applicant has amended the process claims for conformity to the amended product claims.

Applicant acknowledges the Examiner's comment that one entry in the IDS contained a typographical error and the correct patent number should have been US 5,087, 624.

### **35 USC § 112**

Claims 1-27 and 30-35 were rejected under 35 USC § 112, first paragraph, because the specification, while being enabling for treatment, does not reasonably provide enablement for prevention. The claims have been amended to remove the reference to prevention. Applicant requests that the rejection be reconsidered and withdrawn.

Claims 1-27 and 30-35 were rejected under 35 USC § 112, first paragraph, because the specification, while being enabling for Type 2 diabetes, does not reasonably provide enablement

for other conditions encompassed herein. The claims have been amended to recite that the composition is therapeutic for treating hyperglycemia. Enabling support is on pages 33-34 at section C. Applicant requests that the rejection be reconsidered and withdrawn.

Claims 1, 12, 14 and 34-35 were rejected under 35 USC § 112, second paragraph, for indefiniteness for reciting primates and humans. In light of the amendments to the claims, the rejection is moot.

### **35 USC § 102**

Claims 1, 5, 9-11, 22, 24-25 and 27 were rejected under 35 USC § 102(b) as being anticipated by Ghosal (2003/0198695). The Ghosal application was published on October 23, 2003, while the present application was filed on October 16, 2003. Thus the reference is not prior art. Applicant requests that the rejection be reconsidered and withdrawn.

### **35 USC § 103**

Claims 4 and 13 were rejected under 35 USC § 103(a) as being unpatentable over Ghosal (US 2003/0198695) as applied to claims 1, 5, 9-11, 22, 24-25 and 27 above in view of Huang et al. (US 2003/0152588) and Ghosal (US 6,124,268).

Claims 2-3, 6-8, 12, 14-21, 23, 26 and 30-35 were rejected under 35 USC § 103(a) as being unpatentable over Ghosal (US 2003/0198695) in view of Huang et al. (US 2003/0152588) and Ghosal (US 6,124,268) as applied to claims 1, 4-5, 9-11, 13, 22, 24-25 and 27 above, in further view of Ghosal (US 6,440,436) Wang et al. Diabetes 51:S333-342 and Boynton et al. (5,087,623).

The Huang et al. patent application was published on August 14, 2003 while the present application was filed on October 16, 2003. Thus, the Huang application was not described in a printed publication more than one year prior to the filing of the present application, disqualifying it as prior art. As described above, the Ghosal patent application is also disqualified as prior art. Since all of the rejections *require* a combination of references including the *two disqualified references* in order to support the grounds for the rejection, the Examiner has failed to provide a prima facie showing of obviousness. The Examiner provides no *prior art* showing of an herbo-

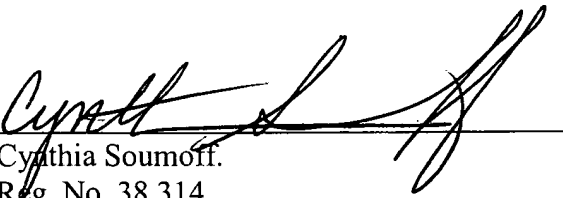
mineral composition from purified Shilajit with extract of *Emblica officianalis* and chromium that is administered to people. Further, the Examiner provides no prior art motivation for a combination. For these reasons alone, no prima facie showing of unpatentability has been made and the claims are patentable over the prior art. Applicant requests that the rejection be reconsidered and withdrawn.

While not required, since no prima facie case has been made, Applicant replies to certain statements made by the Examiner with reference to the art. Ghosal US 6,124,268 never discloses phenolic antioxidant-chromium complexes or hyperglycemia and bears little on the presently claimed invention, other than providing for the extraction of *E. officinalis* to obtain antioxidant fractions. Ghosal US 6,440,436 never discloses phenolic antioxidant-chromium complexes or hyperglycemia and bears little on the presently claimed invention, other than providing for the extraction of Shilajit to obtain antioxidant fractions. Boynton US 5,087,623 never discloses phenolic antioxidant-chromium complexes. Thus, the art disclosed by the Examiner does not provide sufficient information to have motivated the ordinary practitioner in the art to have discovered the presently claimed invention.

In view of the foregoing, Applicants submit that all pending claims are in condition for allowance and request that all claims be allowed. The Examiner is invited to contact the undersigned should he believe that this would expedite prosecution of this application. It is believed that no fee is required. The Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 13-2165.

Respectfully submitted,

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